

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF

PRAXAIR, INC.

**PROCEEDINGS UNDER THE
LOUISIANA ENVIRONMENTAL
QUALITY ACT,
L.A. R.S. 30:2001, ET SEQ.**

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**Enforcement Tracking No.
AE-CN-02-0016**

**AE-CN-03-0041
Agency Interest No.: 2218**

**Enforcement Tracking No.
HE-PP-03-0192
Agency Interest No.: 116032**

SETTLEMENT AGREEMENT

The following Settlement Agreement (“Agreement”) is hereby agreed to between Praxair, Inc. (“Respondent”) and the Department of Environmental Quality (“DEQ” or “Department”) under authority granted by the Louisiana Environmental Quality Act, LSA-R.S. 30:2001, *et seq.*, (the “Act”).

I.

The Respondent is a corporation that owns and operates an industrial gas and chemical manufacturing facility located at the intersection of Louisiana Highway 73 and River Road in Geismar, Ascension Parish, Louisiana (the “Facility”). The Respondent purchased the Facility in January 1996, applied for its first Title V permit in October 1996, and received Air Permit Number 0180-00031-V0 on January 21, 1997. The Facility currently operates under Air Permit Number 0180-00031-V1, applied for by the Respondent through an air permit application dated July 2001, and issued by the Department on July 18, 2003.

II.

The Department issued Consolidated Compliance Order and Notice of Potential Penalty, Enforcement Tracking No. AE-CN-02-0016, dated December 2, 2002, to the Respondent, which was based upon a file review on January 31, 2002:

According to the Air Permit, the Respondent chose to install a double-seal internal floating roof in accordance with NSPS Subpart Kb, 40 CFR 60.112b(a)(1) on the Methanol Storage Tank (Emission Point 7-93) to meet the requirements of 60.112b(a). For vessels equipped with a double-seal system the Respondent is required to visually inspect the internal floating roof, the primary seal, the secondary seal (if one is in service), gaskets, slotted membranes and sleeve seals (if any) each time the storage vessel is emptied and degassed as specified in 40 CFR 60.113b(a)(4) and/or at least every five (5) years in accordance with 40 CFR 60.113b(a)(3)(i). According to a facsimile from the Respondent, storage tank inventory records for the year 1994 indicate initial input of methanol into this product storage tank was March 1994 and that the storage tank was not visually inspected until on or about February 1, 2001. According to the Respondent's Title V Semiannual Monitoring Report for the period encompassing January through June 2000, the Methanol Storage Tank was not visually inspected at least every five (5) years as required. This is a violation of NSPS 40 CFR 60.113b(a)(3)(i) which language has been adopted as a Louisiana regulation in LAC 33:III.3003, the Part 70 and State Only Specific Condition of Air Permit No. 0180-00031-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.

III.

In response to the Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-02-0016, the Respondent noted in a letter dated January 2, 2003, that the double-seal internal floating roof was installed on the Methanol Storage Tank (Emission Point 7-93) in March 1994, which would have been at the time that Respondent's predecessor in title owned the Facility. The Respondent also clarified that between March 1994 and February 2001, the tank was not emptied and degassed, and therefore, only the five (5) year visual inspection was missed.

IV.

The Department issued Consolidated Compliance Order and Notice of Potential Penalty, Enforcement Tracking No. AE-CN-03-0041, dated July 25, 2003, to the Respondent, which was based upon the December 11 through 12, 2002, DEQ site inspection:

The Respondent submitted a letter dated December 19, 2002, in response to the findings noted in the inspection. The Respondent submitted an additional letter dated February 25, 2003, in response to the Warning Letter, dated January 29, 2003, sent by the Department. The responses were reviewed and taken into consideration.

The following three items were noted during the course of the site inspection:

- A. The Respondent has been operating five cooling towers at this facility. These cooling towers are listed in the Title V permit renewal application dated July 2001 as Cooling Tower, Unit I (Emission Point No. 3-01); Cooling Tower, Unit II (Emission Point No. 4-01); Cooling Tower, Unit III (Emission Point No. 5-01); Cooling Tower, Unit VI (Emission Point No. 6-01); and Cooling Tower, Formaldehyde Plant (Emission Point No. 7-01). The factor for PM₁₀ emissions from cooling towers was published in the AP-42 in January 1995. The Respondent submitted an initial Title V air permit application dated October 14, 1996, which did not include the cooling towers. The cooling towers, which had never been included in previous permits, were not included in the current permit under which the facility operates (Air Permit No. 0180-00031-V0). Based on the fact that the emission factor for cooling towers was published in the AP-42 in January 1995, and that the application for Air Permit No. 0180-00031-V0 was submitted after that date, the Respondent failed to permit each of the five cooling towers prior to construction and operation. Each of the Respondent's failure to permit the five cooling towers is a violation of LAC 33:III.501.C.2 and Sections 2057(A)(1) and 2057(A)(2).
- B. The Respondent constructed and operated two storage tanks which are listed in the Title V permit renewal application as an 85 percent MEA Storage Tank (Emission Point No. 1-01) and an 85 percent MEA Storage Tank (Emission Point No. 2-01). The storage tanks were never included in previous permits or in the current permit under which the facility operates (Air Permit No. 0180-00031-V0).

The Respondent failed to permit each of the two storage tanks prior to construction and operation. Each of the Respondent's failures to permit the two storage tanks is a violation of LAC 33:III.501.C.2 and Sections 2057(A)(1) and 2057(A)(2).

- C. The Respondent failed to report all PM₁₀ emissions from the cooling towers (Emission Point Nos. 3-01, 4-01, 5-01, 6-01, and 7-01 as listed in the Title V permit renewal application), for the year 1995, when the factor for PM₁₀ emissions from cooling towers was published in the AP-42, and continuing for subsequent years until the year 2001, when the Respondent reported the emissions in the Emissions Inventory in March 2002. The Respondent's failure to report all PM₁₀ emissions for the years 1995 through 2000 in the Emissions Inventory for each of the cooling towers is a violation of LAC 33:III.919.A and Section 2057(A)(2) of the Act.

V.

The Respondent clarified and provided more information for the three (3) issues noted above in paragraph IV.

VI.

According to the Respondent in a letter dated August 11, 2003, the five cooling towers were initially placed in service by the Respondent's predecessor in 1971, 1981, 1988, 1995, and 1993, respectively. The cooling towers, which had never been included in previous permits issued to the Respondent's predecessor, were not included in the permit under which the facility operated at the time of the site inspection, although they were included in the Title V permit renewal filed with the DEQ in July 2001, the basis for Air Permit No. 0180-00031-V1. Based on the date that the Respondent purchased the Facility and the date that the AP-42 emission factor for PM₁₀ from cooling towers was published, the AP-42 emission factor was published one year prior to the acquisition of the Facility by the Respondent. The emission sources cited have been included in the Respondent's July 18, 2003, air permit.

VII.

The Respondent clarified in a letter dated August 11, 2003, the construction dates for the two MEA storage tanks. The Respondent notes in a letter dated August 11, 2003, that the Respondent's predecessor constructed in 1971 one of the two storage tanks that are listed in the Title V permit renewal application as an 85 percent MEA Storage Tank (Emission Point No. 1-01) and an 85 percent MEA Storage Tank (Emission Point No. 2-01). The emission sources have been included in the Respondent's July 18, 2003, air permit.

VIII.

The Respondent noted that the Facility was not owned by the Respondent in 1995. The Emissions Inventory for the reporting year 1995 was due by March 31, 1996, at which time the Respondent owned the Facility. However, the emissions data that would have been reported in the Emissions Inventory due by March 31, 1996, were that of the Respondent's predecessor. The Respondent submitted the Emissions Inventory for the years 1995 through 2000, all of which were signed September 18, 2003, and under cover letter dated September 19, 2003.

IX.

The Respondent also owns and operates an air separation facility (the "Plaquemine Facility") located at 56815 Evergreen Road in Plaquemine, Iberville Parish, Louisiana. On or about May 21, 2003 the DEQ performed an inspection in response to a citizen complaint of the dumping of several cans of paint refuse on the levee under the new Mississippi River Bridge in Baton Rouge, East Baton Rouge Parish, Louisiana. On September 10, 2003 the Respondent notified the DEQ that the Plaquemine Facility is a Conditionally Exempt Small Quantity Generator of hazardous waste.

X.

The Department issued a Notice of Potential Penalty, Enforcement Tracking No. HE-PP-03-0192, dated November 18, 2003, to the Respondent, which was based on the May 21, 2003 inspection. Such notice was received on December 1, 2003 by Respondent's Official Agent, and on December 10, 2003 the Respondent submitted a letter to the Department in response to the November 18, 2003 Notice. This response was reviewed and taken into consideration. In this response, Respondent explained that usable paint from the Plaquemine Facility was donated to a local painter for his use in his business. Later, due to a series of events unknown to Respondent, the paint was discovered on a local levee. On May 22, 2003, the Respondent was notified by the Department about the paint's discovery and then promptly assumed the responsibility for the cleanup and disposal of the paint cans and boxes along with some concrete and soil. The material was returned to the Plaquemine Facility, and an approved waste management vendor was contacted for the purpose of waste characterization and disposal services. On July 2, 2003 the waste was transported to an off-site permitted disposal facility.

XI.

In response to the Consolidated Compliance Orders and Notices of Potential Penalty, and to the Notice of Potential Penalty, Respondent made timely requests for meetings between it and the Department.

XII.

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

XIII.

Nonetheless, Respondent, without making any admissions of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, the amount of FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00), of which SIX HUNDRED TWENTY-SEVEN AND 61/100 DOLLARS (\$627.61) represents DEQ's enforcement costs, in settlement of the claims set forth in this Agreement. The total amount of money expended by Respondent on cash payments to the Department shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

XIV.

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Orders and Notices of Potential Penalty, and this Agreement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action the Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

XV.

This Agreement shall be considered a final order of the Secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this Agreement.

XVI.

This Agreement is being made in the interest of settling the State's claims and avoiding for both parties the expense and effort involved in litigation or adjudicatory hearing. In agreeing

to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in L.A.R.S. 30:2025(E) of the Act.

XVII.

The Respondent has caused a public notice advertisement to be placed in the official journals of the parish governing authorities in Ascension and Iberville Parishes. The advertisement, in form, wording, and size approved by the Department, announced the availability of the Agreement for public view and comment and the opportunity for a public hearing. Respondent has submitted proof-of-publication affidavits to the Department and, as of this date of this Agreement is executed on behalf of the Department, more than forty-five (45) days have elapsed since the publication of the notices.

XVIII.

Payment of the penalty described in Paragraph XIII is to be made within ten (10) days from the notice of the Secretary's signature. If payment is not received within that time, this agreement is voidable at the option of the Department. Penalties are to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303.

XIX.


In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Agreement.

XX.

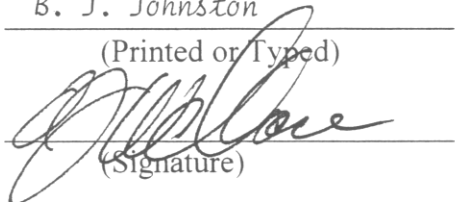
Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Agreement on behalf of his/her respective party and to legally bind such party to its terms and conditions.

WITNESSES:


PRAXAIR, INC.


(Signature)

B. J. Johnston
(Printed or Typed)


(Signature)

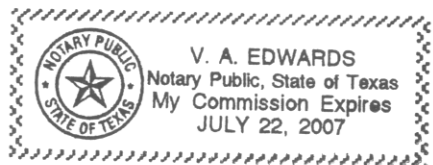
A. J. Wallace
(Printed or Typed)

BY:  *26T*
(Signature)

D. H. Vankowski
(Printed or Typed)

TITLE: Vice President
Southern Region, NAIG

THUS DONE AND SIGNED in duplicate original before me this 5th day of May, 20 04, at Houston, Texas.




NOTARY PUBLIC (ID #)

V. A. Edwards
(Printed or Typed)

WITNESSES:

Louder Thunvalde
(Signature)

Louder Thunvalde
(Printed or Typed)

Peggy M. Hatch
(Signature)

Peggy M. Hatch
(Printed or Typed)

STATE OF LOUISIANA

Mike D. McDaniel, Ph.D., Secretary
Department of Environmental Quality

BY: Harold Leggett
Harold Leggett, Ph.D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 30th day of
August, 20 07, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 20451)

Ted F. Bryle, II
(Printed or Typed)

Approved: Harold Leggett 4-15-04
Harold Leggett, Ph.D., Assistant Secretary



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

August 3, 2004



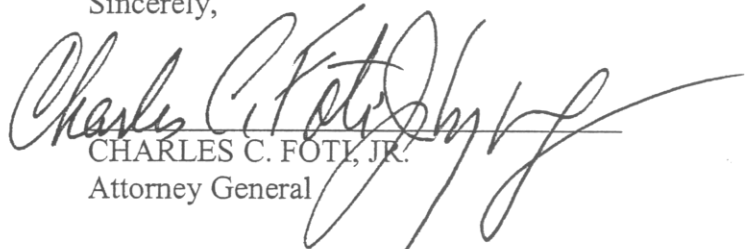
Mike D. McDaniel, Secretary
La. Department of Environmental Quality
Office of the Secretary
P.O. Box 4301
Baton Rouge, LA 70821-4301

Re: Review of DEQ Settlement;
Praxair, Inc.
AE-CN-02-0016, et al

Dear Secretary McDaniel:

Pursuant to the authority granted to me by R.S. 30:2050.7(E)(2)(a), I approve the above referenced settlement.

Sincerely,


CHARLES C. FOTI, JR.
Attorney General

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